

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

ANDRAS GRUBER,

Plaintiff,

v.

**OREGON HEALTH & SCIENCE
UNIVERSITY; and DANNY JACOBS,**

Defendants.

Case No. 3:23-cv-01902-YY

ORDER ADOPTING F&R

Elizabeth C. Savage, Ivan M. Karmel PC, 1023 SW Yamhill Street, Suite 200, Portland, OR 97205, Kristen Mohr and Andrew Miltenberg, Nesenoff & Miltenberg LLP, 363 7th Ave, 5th Floor, New York, NY 10001. Attorneys for Plaintiff.

Cristela Delgado-Daniel and Liani Jeanheh Reeves, Miller Nash LLP, 1140 SW Washington St, Suite 700, Portland, OR 97205. Attorneys for Defendants.

IMMERGUT, District Judge.

On October 23, 2024, Magistrate Judge You issued her Findings & Recommendations (“F&R”), recommending that this Court grant Defendants’ Motion to Dismiss and dismiss this case with prejudice, ECF 22. Judge You previously held oral argument on October 9, 2024, ECF 21. Plaintiff filed Objections, ECF 24, and Defendants filed a Response, ECF 25. This Court has

reviewed de novo the portion of the F&R to which Plaintiff objected and adopts Judge You's F&R in full.

Under the Federal Magistrates Act ("Act"), as amended, the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If a party objects to a magistrate judge's F&R, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* But the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the F&R that are not objected to. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Nevertheless, the Act "does not preclude further review by the district judge, *sua sponte*" whether de novo or under another standard. *Thomas*, 474 U.S. at 154.

This Court declines to consider Plaintiff's vicarious liability argument that was not briefed before Judge You. *See* Objections, ECF 24 at 3; *Jones v. Blanas*, 393 F.3d 918, 935 (9th Cir. 2004) ("[A] district court has discretion not to consider evidence offered for the first time in a party's objections to a magistrate judge's proposed findings and recommendations"). This Court has carefully considered the remaining objections and concludes that they do not provide a basis to modify the recommendation.

Because claim preclusion bars Plaintiff's claims, this Court finds that amendment would be futile. *See, e.g., Factory Direct Wholesale, LLC v. iTouchless Housewares & Prod., Inc.*, 411 F. Supp. 3d 905, 919 (N.D. Cal. 2019). Accordingly, this case is dismissed with prejudice.

CONCLUSION

This Court has reviewed de novo the portions of Judge You's F&R to which Plaintiff objected. Judge You's F&R, ECF 22, is adopted in full. This Court GRANTS Defendants' Motion to Dismiss, ECF 11, and DISMISSES this case with prejudice.

IT IS SO ORDERED.

DATED this 5th day of December, 2024.

/s/ Karin J. Immergut
Karin J. Immergut
United States District Judge